

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
AND THE HUMAN RIGHTS COMMISSION  
STATE OF MONTANA

In the matter of the proposed amendment	)	NOTICE OF PUBLIC HEARING
of ARM 24.8.101, 24.8.103, 24.8.105,	)	ON PROPOSED AMENDMENT,
24.8.201, 24.8.203, 24.8.205, 24.8.207,	)	AMENDMENT AND TRANSFER,
24.8.210, 24.8.212, 24.8.216, 24.8.220,	)	ADOPTION, AND REPEAL
24.8.301, 24.8.401, 24.8.403, 24.8.410,	)	
24.9.101 24.9.102, 24.9.103, 24.9.104,	)	
24.9.105, the proposed amendment and	)	
transfer of ARM 24.9.1701, 24.9.1703,	)	
24.9.1704, 24.9.1705, 24.9.1711,	)	
24.9.1712, 24.9.1714, 24.9.1717, and	)	
24.9.1718, the proposed adoption of NEW	)	
RULES I through XXIII, the proposed	)	
repeal of ARM 24.8.405, 24.9.107,	)	
24.9.210, 24.9.212, 24.9.213, 24.9.218,	)	
24.9.219, 24.9.220, 24.9.221, 24.9.222,	)	
24.9.223, 24.9.224, 24.9.225, 24.9.226,	)	
24.9.230, 24.9.231, 24.9.261, 24.9.262A,	)	
24.9.263, 24.9.264, 24.9.265, 24.9.301,	)	
24.9.302, 24.9.303, 24.9.304, 24.9.305,	)	
24.9.306, 24.9.307, 24.9.308, 24.9.309,	)	
24.9.310, 24.9.311, 24.9.312, 24.9.314,	)	
24.9.316, 24.9.317, 24.9.318, 24.9.319,	)	
24.9.320, 24.9.321, 24.9.322, 24.9.323,	)	
24.9.324, 24.9.325, 24.9.326, 24.9.327,	)	
24.9.328, 24.9.401, 24.9.402, 24.9.403,	)	
24.9.404, 24.9.405, 24.9.406, 24.9.407,	)	
24.9.409, 24.9.410, 24.9.411, 24.9.412,	)	
24.9.414, and 24.9.1719 pertaining to	)	
allegations of unlawful discrimination	)	

TO: All Concerned Persons

1. On October 30, 2008, at 10:00 a.m., the Department of Labor and Industry (department) and the Human Rights Commission (commission) will hold a joint public hearing to be held in the State Capitol, first floor, Room 152, Helena, Montana to consider the proposed amendment, amendment and transfer, adoption, and repeal of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on October 22, 2008, to advise us of the nature of the accommodation that you need. Please contact the Office of Legal Services,

Department of Labor and Industry, Attn: Marieke Beck, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-2917; fax (406) 444-1394; TDD (406) 444-5549; or e-mail mabeck@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The department and the commission have separate but related responsibilities associated with processing complaints of unlawful discrimination arising under the Montana Human Rights Act (act) and the Governmental Code of Fair Practice (code). Although the department and the commission have separate rulemaking authority, both parties determined that it was necessary to work jointly on this rules project in order to coordinate the rules that govern how a complaint of discrimination brought pursuant to the act and/or the code proceeds through the department's administrative process.

A complaint of discrimination has the potential of passing through three separate and distinct organizational units before the issuance of a final agency decision, namely: the department's Human Rights Bureau, the department's Hearings Bureau, and Human Rights Commission, which is administratively attached to the department.

The department and the commission have determined that there is reasonable necessity to amend, amend and transfer, adopt, and repeal a number of the rules related to complaints of discrimination because a number of participants in the process have expressed confusion regarding the role and function of the separate units. Consequently, the bulk of the proposed rule amendments reflect clarifications and additions that help better explain the existing functions of the separate units.

With the amendments and transfers, the department and the commission propose to group administrative rules according to each organizational unit and then place the rules in order of how a complaint might typically graduate through the process. As for NEW RULES I through XXIII, the department's Hearings Bureau has been operating without specific administrative rules for human rights complaints for several years. The new rules will assist the parties in understanding their rights and responsibilities in front of the Hearings Bureau.

In addition, the department and the commission note that it is reasonably necessary to update certain rules in order to conform to recent legislative changes to the enforcement provisions of the Montana Human Rights Act (Chapter 28, Laws of 2007). Additionally, since all of the pre-July 1, 1997, discrimination cases have passed through the administrative process, all references to language that governs or controls complaints filed prior to July 1, 1997, are being removed. For example, ARM Title 24, chapter 9, subchapter 4, dealing with declaratory judgments is no longer applicable.

The majority of the proposed amendments are technical and nonsubstantive in nature, such as renumbering, correcting syntax, streamlining, eliminating redundancies, and improving readability. In addition, references to the department

have been changed throughout the rules to accurately reflect the different organizational entities (e.g., Human Rights Bureau, Hearings Bureau) contained in the department.

The authority and implementation citations are being amended throughout to accurately reflect the legislative changes and to clarify that the rules apply equally to matters arising under the act and under the code.

This general statement of reasonable necessity applies to all of the proposed amendments, new rules, repeals, and transfers. Where additional specific bases for proposed action exists, those bases are identified and set forth in the statement of reasonable necessity that immediately follows the rule.

4. The rules proposed to be amended provide as follows, stricken material interlined, new material underlined:

24.8.101 PURPOSE AND SCOPE OF RULES; -- EFFECT OF PARTIAL INVALIDITY (1) The purpose of the rules in this chapter is to describe the procedures followed by the Department of Labor and ~~Industry~~ Industry's ~~(department)~~ Human Rights Bureau and Hearings Bureau ~~in investigating and conciliating complaints of discrimination and enforcing the laws prohibiting discrimination in administering complaints of discrimination filed pursuant to the Montana Human Rights Act (act) and the Governmental Code of Fair Practices (code) contained in Title 49, chapters 2 and 3, MCA. These rules apply to complaints of discrimination filed on or after July 1, 1997.~~

(2) The ~~department~~ Human Rights Bureau and the Hearings Bureau will construe the provisions of the act, the code, and these rules with a view to ~~affect~~ effect their objects and to promote justice. A principal objective of the act and code is to assure that there will be no discrimination in certain areas of the lives of Montana citizens, except under the most limited of circumstances.

(3) In construing the provisions of the act and code, the ~~department~~ Human Rights Bureau and the Hearings Bureau will refer to federal civil rights case law where it is both useful and appropriate and does not conflict with the purposes and intentions of state law.

(4) remains the same.

(5) ~~The department may disregard nonprejudicial errors of law or procedure which do not deny a party due process, a fair hearing or fundamental justice.~~ Parties who assign error for the violation of any rule have the burden to demonstrate that a failure to comply with these rules is in fact prejudicial or constitutes prejudice as a matter of law.

(6) Where strict adherence to these rules would cause undue hardship or create a substantial injustice to a party, the ~~department~~ Human Rights Bureau and the Hearings Bureau may modify, waive, or excuse their application. ~~The department may not modify, waive, or excuse mandatory acts which are unless~~ required by statute or due process of law.

(7) Parties who choose not to be represented by counsel and who represent themselves must substantially comply with the provisions of these rules, subject to

the provisions of (6). The ~~department~~ Human Rights Bureau and the Hearings Bureau may modify the strict application of these rules to an unrepresented party to the extent they are not mandatory to assure fundamental fairness.

AUTH: 49-2-204, 49-3-106, MCA

IMP: Title 49, ch. 2 and ch. 3, MCA

24.8.103 DEFINITIONS The following definitions apply throughout this chapter:

(1) and (2) remain the same.

(3) "Charging party" means a person who files a discrimination complaint with the ~~department~~ Human Rights Bureau or a federal agency with whom the ~~department~~ Human Rights Bureau has a work-sharing agreement.

(4) through (6) remain the same.

(7) "Contested case" means proceedings before the Hearings Bureau to determine the legal rights, duties, and privileges of the parties.

(8) "Department" means the Department of Labor and Industry.

(9) "Hearing officer" means administrative law judge appointed by the Hearings Bureau to preside over contested case proceedings.

(10) "Hearings Bureau" means the organizational unit of the department that conducts contested case proceedings after the Human Rights Bureau has issued a reasonable cause finding on a complaint of discrimination.

(11) "Human Rights Bureau" means the organizational unit of the department that informally investigates and seeks resolution to complaints of unlawful discrimination.

~~(7)~~(12) "Notice of dismissal and right to sue" means a document ~~which terminates the jurisdiction of the department over a complaint under the Act or Code and which allows a charging party or aggrieved party to~~ provided to the charging party by the Human Rights Bureau indicating that charging party has completed the department's administrative process and can file a discrimination action in district court pursuant to 49-2-511, MCA.

~~(8)~~(13) "Reasonable cause" means that based on an informal investigation a preponderance of the evidence supports a finding of unlawful discrimination. ~~A finding of "reasonable cause" is equivalent to "merit" as provided in 49-2-504, MCA.~~

~~(9)~~(14) "Respondent" means any person against whom a complaint is filed.

AUTH: 49-2-204, 49-3-106, MCA

IMP: Title 49, ch. 2 and ch. 3, MCA

24.8.105 APPLICABILITY OF COMMISSION RULES (1) In discharging its ~~their~~ responsibilities for investigating and enforcing the laws prohibiting discrimination, the ~~department~~ Human Rights Bureau and the Hearings Bureau ~~applies~~ will apply the interpretive rules of the commission contained in ARM Title 24, chapter 9, sub-chapters ~~6 (Proof of Unlawful Discrimination), 10 (Sex Discrimination in Education), 12 (Maternity Leave), 13 (Insurance and Retirement Plans), and 14 (Guidelines for Employment).~~

AUTH: 49-2-204, MCA  
IMP: 49-2-204, 49-2-205, MCA

REASON: There is reasonable necessity to amend this rule so that it is clear that both the Human Rights Bureau and the Hearings Bureau will apply the interpretive rules set forth in ARM Title 24, chapter 9. The interpretive rules include references to the Equal Employment Opportunity Commission (EEOC) guidelines. Both the department and the commission understand that the EEOC guidelines are to be read and construed in a manner consistent with Montana case law, statute, and the existing ARM. To the extent that there is a conflict, Montana case law, statute, and administrative rules will be controlling.

24.8.201 FILING OF COMPLAINTS (1) A complaint may be filed with the ~~department~~ Human Rights Bureau by or on behalf of any aggrieved party. Complaints ~~shall~~ must be filed with the ~~department~~ Human Rights Bureau by mail addressed to the Human Rights Bureau, P.O. Box 1728, Helena, MT 59624-1728; personal delivery to 1625 Eleventh Avenue (USF&G Building, second floor), Helena, MT 59601; or fax to (406) 444-2798.

(2) remains the same.

(3) A complaint is considered to be filed on the date it is received by the ~~department~~ Human Rights Bureau, either by mail, hand-delivery, or facsimile. If the last day of the time limit falls upon a Saturday, Sunday, legal holiday, or the department offices are closed on such day, the time limit will run until the end of the next day when the department offices are open.

(a) In the case of a complaint which is deferred or transmitted to the ~~department~~ Human Rights Bureau by any government agency pursuant to any agreement entered into between the agency and the department, the complaint is deemed filed as of the date it was filed with ~~or received by~~ the agency which deferred or transmitted the complaint.

(4) remains the same.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-210, 49-2-501, ~~49-2-504~~ 49-3-315, MCA

REASON: There is reasonable necessity to amend this rule in order to clarify the status of complaints that are due on a day that the Human Rights Bureau office is closed.

24.8.203 FORM OF COMPLAINTS (1) A complaint is a written document filed with the ~~department~~ Human Rights Bureau. An aggrieved party or a person filing on behalf of an aggrieved party may draft and file a complaint. Except as provided in (2), a complaint ~~shall~~ must contain, at a minimum, the following information:

(a) through (2) remain the same.

(3) ~~A charging party must submit a verified complaint before the bureau will require a response from the respondent.~~ The ~~department~~ Human Rights Bureau will notify the charging party of the obligation to submit a verified complaint. If the

charging party does not submit a verified complaint, the bureau will dismiss the complaint.

(4) If the charging party does not allege facts sufficient to constitute a short and plain statement of the claim showing that the charging party is entitled to relief under Title 49, chapters 2 and 3, MCA, the ~~department~~ Human Rights Bureau will notify the charging party that the department does not have jurisdiction over the complaint, and the case will be dismissed unless the charging party amends the complaint to state a valid claim.

(5) Any person may file a complaint on behalf of any person claiming to be aggrieved if the person is the aggrieved party's guardian, attorney, or duly authorized representative or an advocacy group, labor organization, or other organization acting as an authorized representative. The person making the complaint must provide ~~the department with~~ the name and address of the person on whose behalf the charge is made. During its investigation, the ~~department~~ Human Rights Bureau ~~shall~~ will verify the authorization of such complaint by the person(s) on whose behalf the complaint is made. If the person on whose behalf the complaint is filed indicates in writing ~~to the department~~ that he or she does not wish the complaint processed, the ~~department~~ Human Rights Bureau shall dismiss the complaint.

(6) A person wishing to file a complaint on behalf of a class must identify a representative for the members of a class. This representative must adequately reflect the interests of the members. As part of the informal investigation, the Human Rights Bureau will notify the respondent or respondents that the complaint was filed on behalf of a class, but the Human Rights Bureau will not rule on class status.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-501, 49-2-504, 49-3-315, MCA

REASON: There is reasonable necessity to amend this rule in order to resolve a conflict that unnecessarily impedes the Human Rights Bureau's informal investigation. As written, the rule allows a charging party to verify a complaint at any time after the initial filing, but the same rule then restricts the Human Rights Bureau from beginning its investigation until it can require a response from the respondent. The change prevents undue delay of the informal investigation. Additionally, the rule clarifies the Human Rights Bureau's role when a complaint is filed on behalf of a class.

24.8.205 INTAKE PROCEDURE (1) A person claiming unlawful discrimination may contact the ~~department~~ Human Rights Bureau by mail or telephone to inquire about filing a complaint of discrimination. Any advice or assistance provided to a potential charging party who contacts the ~~department~~ Human Rights Bureau ~~with questions about filing a complaint, or who seeks the assistance of the department in drafting a complaint,~~ shall be offered objectively and impartially pursuant to 49-2-205, MCA.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-205, 49-2-504 49-3-315, MCA

24.8.207 NOTICE OF FILING OF COMPLAINTS (1) Within ten business days of the filing of a complaint, the department Human Rights Bureau shall serve notice of filing upon the parties by ~~certified mail or personal service~~. The notice shall:

- (a) through (e) remain the same.
- (f) advise the parties of their right to receive a copy of all other information submitted with the complaint and during the investigation and right to review their file subject to the provisions of ARM 24.8.210; and
- (g) remains the same.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-301, 49-2-303, 49-2-305, 49-2-504, 49-2-510, 49-3-315, MCA

REASON: There is reasonable necessity to amend this rule to remove the requirement that the Human Rights Bureau serve notice of the complaint upon respondent or respondents by certified or personal service. At the informal investigation stage, the statute merely requires that the Human Rights Bureau "notify" the respondent or respondents that a complaint has been filed. Mont. Code Ann. 49-2-504(3). In the event that the informal investigation determines that there is reasonable cause to believe that a preponderance of the evidence supports a finding of discrimination, then the matter is certified to the Hearings Bureau. After a complaint is certified, the Hearings Bureau serves a copy of the complaint on the respondent.

#### 24.8.210 CONFIDENTIALITY AND RELEASE OF INFORMATION

(1) ~~The department finds that there~~ There is a compelling state interest in the elimination of illegal discrimination in Montana pursuant to Art. II, sec. 4 of the Montana Constitution (1972). ~~The department also recognizes that the Montana Constitution expressly provides for an individual right of privacy in Art. II, sec. 10. The department finds that in~~ In some cases, the interest of a person in viewing documents material related to a complaint or gathered as part of the investigation will compete with individual privacy interests. In order to balance these interests, the Human Rights Bureau will take the following steps upon receiving a request for information:

~~(2)(a) If~~ When a person ~~other than a party subject to the terms of 49-2-504(1)(a), MCA,~~ requests information or materials for which an individual right of privacy has been asserted or might be asserted, ~~or asserts a privacy interest in information or materials in the possession of the department,~~ the department Human Rights Bureau will take the following steps:

~~(a) The department will review the request for information or assertion of privacy rights and will attempt to contact the parties and provide them an opportunity to state why their individual privacy interests should outweigh the public's right to know~~ object to the release of this information.

~~(b) If a party objects~~ there is an objection to the release of ~~the charge of discrimination~~ information, the department Human Rights Bureau will promptly notify

~~both parties of the objection. The department will also advise the requesting person that he or she requestor has ten business days from the receipt of notice of the department's refusal in which to~~ that the requestor may file a written request for review of the objection to release department's decision.

(c) Upon receipt of a written request for review, The the department Human Rights Bureau shall immediately refer a the request for review under (2)(b) to the Hearings Bureau, and the Hearings Bureau shall will promptly provide the parties an opportunity to be heard regarding the internal decision, under hearings bureau procedures.

(i) A party that has provided information to the department about a nonparty may assert a privacy interest on behalf of a nonparty.

(ii) The Human Rights Bureau may assert an interest in delaying the release of information until the completion of its informal investigation if the release of information would threaten the integrity of a pending investigation.

~~(3) After a finding of reasonable cause or no reasonable cause or other agency action terminating the investigation of a case, the complaint, information obtained in the investigation of the complaint, and other information in the department file which does not relate to privacy interests protected by law, becomes public information. If a privacy interest is involved, the procedures as outlined in (2) shall apply.~~

~~(4)(2)~~ The department may restrict disclosure of information regarding complaints alleging violations of federal law which are within the jurisdiction of the department because of work sharing arrangements with federal agencies, pursuant to provisions of federal law.

~~(5)(3)~~ All ~~settlement and conciliation~~ voluntary resolution agreements are public information except to the extent that they relate to privacy interests protected by law. A governmental entity does not have a privacy interest in any settlement or conciliation agreement.

(4) A hearing officer's decision regarding the release of information is considered the final agency decision for the purpose of judicial review pursuant to the Montana Administrative Procedure Act.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 2-4-702, 49-2-501, 49-2-504, through 49-2-505, 49-2-506, 49-2-510, 49-3-315, MCA

REASON: There is reasonable necessity to amend this rule in order to make the process for requesting information clearer. As written, it only applies to third-party requests for information. However, this rule has been applied to party requests for information. *Owen v. Billings Police Dep't*, 331 Mont. 10,127 P.3d 1044 (2006).

24.8.212 INFORMAL INVESTIGATION BY THE DEPARTMENT (1) The department's Human Rights Bureau has the authority to gather sufficient information to allow a thorough scrutiny of the circumstances surrounding complaints of discrimination through an informal investigation. The investigation shall be conducted in a fair and impartial manner. The department Human Rights Bureau will normally utilize methods such as written information requests and telephone and



personal interviews to obtain information in the course of the informal investigation; ~~relying on more formal investigative tools such as subpoenas and depositions only after attempts to achieve voluntary cooperation have been unsuccessful.~~

~~(2) The department, in investigating a charge of discrimination under the Act, may request the commissioner to exercise any and all powers provided for in 49-2-2-3, MCA.~~

~~(3) Subject to the provisions of 49-2-506(3), MCA, the department may exercise its investigative powers in determining if a conciliation agreement is being honored or an order of the department is obeyed.~~

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-203 49-2-205, 49-2-504, 49-2-506, and 49-2-509 49-3-315, MCA

REASON: There is reasonable necessity to amend this rule to emphasize the scope of the investigation as set out in *Montana Human Rights Comm. v. City of Billings*, 199 Mont. 434, 649 P.2d 1238 (1982). Additionally, the department is proposing that the rule emphasize the informal nature of the investigation, thereby removing language that indicates that the Human Rights Bureau conducts depositions. The Human Rights Bureau's investigation is not subject to either the Montana Rules of Civil Procedure or the Rules of Evidence. After the informal investigation is complete, the charging party is afforded the opportunity to pursue his or her complaint *de novo* (either in front of a district court or in front of the department's Hearings Bureau). These hearings are subject to both the Montana Rules of Civil Procedure and the Rules of Evidence.

#### 24.8.216 EFFECT OF FAILURE TO COOPERATE WITH INVESTIGATION

~~(1) When a charging party or an aggrieved party refuses to comply with a request by the department Human Rights Bureau for information or evidence reasonably necessary for the investigation, conciliation or litigation of the complaint, or fails to advise the department of a change of address causing the department to be unable to locate them, the department shall dismiss the case and issue a notice of dismissal and right to sue, or shall dismiss so much of the complaint as relates to that charging party or aggrieved party.~~

~~(2) If a respondent has been notified of a complaint and the department has requested information in the course of its investigation which the respondent fails to provide within the time specified, the department the Human Rights Bureau may take one or more either or both of the following actions to complete its investigative responsibilities:~~

- ~~(a) request the commissioner to issue a subpoena; and~~
- ~~(b) draw an adverse inference against respondent the unresponsive party as to the evidence sought, if respondent willfully fails to produce information; and~~
- ~~(c) make a finding of merit of the complaint, engage in conciliation and, if unsuccessful, set the case for contested case hearing.~~

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-504, 49-3-315, MCA

REASON: There is reasonable necessity to amend this rule so that the provisions regarding failure to cooperate apply equally to both charging parties and respondents.

24.8.220 FINDING OF REASONABLE CAUSE OR NO REASONABLE CAUSE AND FINAL INVESTIGATIVE REPORT (1) Within 120 days (for cases filed pursuant to 49-2-305, MCA) or 180 days (for all other cases, pursuant to ~~49-2-504(4)~~ 49-2-504, MCA), the ~~department~~ Human Rights Bureau will conclude its informal investigation by issuing a written finding in a final investigative report. The finding will include a brief statement of the reasons for the ~~department's~~ Human Rights Bureau's conclusions and will be mailed to all parties.

(a) If any or all of the allegations of discrimination contained in the complaint are supported by a preponderance of the evidence, the ~~department~~ Human Rights Bureau will issue a finding of reasonable cause and the complaint will be certified for hearing, pursuant to 49-2-505, MCA.

(b) If none of the allegations of discrimination in the complaint are ~~not~~ supported by a preponderance of the evidence, if the Human Rights Bureau determines that the complaint is untimely, or if the department Human Rights Bureau determines that it lacks jurisdiction over the complaint, the department will issue a finding of no reasonable cause. A finding of no reasonable cause will be accompanied by a notice of dismissal and right to sue in accordance with ARM 24.8.403. After a receipt of a notice of dismissal and right to sue, a charging party may continue the administrative process by filing objections with the commission or discontinue the administrative process and commence proceedings in district court as provided in 49-2-511, MCA.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-305, 49-2-504, 49-2-505, ~~49-2-506, 49-2-507~~ 49-2-511, 49-3-315, MCA

REASON: There is reasonable necessity to amend this rule so that it conforms to the language of the statute. A complaint of discrimination may contain several different allegations of discrimination (e.g., failure to hire, retaliation). When the Human Rights Bureau concludes that there is reasonable cause to believe that a preponderance of the evidence supports some or all of the charging party's allegations of discrimination, the statute states that the Human Rights Bureau shall certify the "complaint." Mont. Code Ann. 49-2-504(7)(c). The statute does not give the Human Rights Bureau the discretion to separate a complaint by allegation when it prepares to certify that complaint for hearing.

24.8.301 CONCILIATION AND SETTLEMENT VOLUNTARY RESOLUTION AGREEMENTS (1) ~~At any time during the complaint process, the department~~ The Human Rights Bureau may undertake efforts to achieve a voluntary resolution of the case ~~through mediation efforts with the parties.~~ Any voluntary resolution of the complaint agreed to by the parties before the Human Rights Bureau begins its informal investigation is referred to as a mediation agreement. Any voluntary resolution of a complaint agreed to by the parties after the investigation has begun and before the department Human Rights Bureau issues a finding on the merits of

the claim is referred to as a settlement agreement. Any voluntary resolution agreed to after the department Human Rights Bureau issues a reasonable cause finding is referred to as a conciliation agreement.

~~(2)~~ Any ~~settlement or conciliation~~ voluntary resolution agreement reached while the complaint is pending in the administrative process, whether mediated by the department Human Rights Bureau or agreed to by the parties independently, is subject to the provisions of this rule.

~~(2)(3)~~ If the department Human Rights Bureau issues a reasonable cause finding, it shall attempt to resolve the case through conciliation. During conciliation, the department Human Rights Bureau may require affirmative relief provisions to eliminate the discriminatory practice confirmed in the informal investigation. Such affirmative relief provisions may include any remedy which could be ordered by the department Hearings Bureau after hearing. If the ~~department determines that~~ conciliation is not possible, the department Human Rights Bureau shall inform the parties in writing that the conciliation period is concluded and set certify the case for hearing, pursuant to 49-2-505, MCA.

~~(3)(4)~~ No statement made by any party in the course of a ~~settlement or conciliation offer~~ voluntary resolution discussions, or in any oral or written discussion concerning conciliation, will be admissible in any hearing held concerning the complaint except as provided for by Rule 408, M.R.Evid. Agreement to a ~~settlement or conciliation~~ voluntary resolution of a case does not necessarily constitute an admission of violation of any law by the respondent.

~~(4)(5)~~ A ~~settlement or conciliation~~ voluntary resolution agreement reached by the parties must be in writing, signed by the parties, and approved by the department Human Rights Bureau. ~~Upon approval of a settlement or conciliation agreement, the department shall dismiss the case.~~ Dismissal of a case based on a ~~settlement or conciliation~~ voluntary resolution agreement shall constitute the end of the administrative process.

~~(5)(6)~~ A ~~settlement or conciliation~~ voluntary resolution agreement may include terms for monitoring compliance with the agreement, not to extend beyond one year from the date of the agreement.

~~(6)(7)~~ The parties must inform the department Human Rights Bureau of all terms of any ~~settlement or conciliation~~ voluntary resolution agreement entered into while the complaint is pending in the administrative process. In addition, the parties must inform the department Human Rights Bureau of all terms of any ~~conciliation agreement~~ voluntary resolution entered into after the ~~department or the commission has issued a final agency decision has been issued order.~~

~~(7)(8)~~ The department Human Rights Bureau may refuse to approve a ~~settlement~~ voluntary resolution agreement which does not resolve all allegations or remedies for all persons or groups affected by the alleged discrimination. Alternatively, the department Human Rights Bureau may treat a ~~settlement or conciliation~~ voluntary resolution agreement which does not resolve all allegations or remedies for all persons or groups affected by the alleged discrimination as a withdrawal in accordance with ARM 24.8.401, and may initiate the complaint as a commissioner complaint for further proceedings.

~~(8)(9)~~ A conciliation agreement may be enforced by the commissioner, the Human Rights Bureau, or by any party in the same manner as a final order of the

department by seeking appropriate orders in the district court, pursuant to 49-2-508, MCA.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-504, 49-2-505, 49-2-508, 49-3-315, MCA

REASON: There is reasonable necessity to amend the rule in response to confusion expressed by parties participating in the process. The changes clarify that there are three different stages of voluntary resolutions that are possible during the informal investigation and the role of the Human Rights Bureau is different at all three stages.

24.8.401 WITHDRAWAL OF COMPLAINT DURING THE INFORMAL INVESTIGATION (1) Any person who has filed a complaint with the ~~department~~ Human Rights Bureau or any person on whose behalf a complaint has been filed may make a request in writing that the complaint be withdrawn. This request may be made at any time ~~during the administrative process~~ before a finding is issued and must be approved by the Human Rights Bureau. Upon approval by the ~~department~~ Human Rights Bureau, withdrawal of a complaint completes the administrative process.

(2) remains the same.

(3) The ~~department~~ Human Rights Bureau ~~shall~~ may dismiss the complaint upon receipt of a written request for withdrawal of a complaint and approval of that request, except for those parts which the commissioner may initiate as a commissioner complaint.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-210, 49-2-501, 49-2-504, 49-3-315, MCA

REASON: There is reasonable necessity to amend the rule to clarify that the Human Rights Bureau only has the authority to dismiss or consider the dismissal of complaint before it issues a finding and further, that the Human Rights Bureau's authority to dismiss is discretionary.

24.8.403 DISMISSAL BY THE DEPARTMENT HUMAN RIGHTS BUREAU (1) The ~~department~~ Human Rights Bureau shall conclude the department's administrative proceedings and issue a notice of dismissal and right to sue if:  
(a) the ~~department~~ Human Rights Bureau determines that it lacks jurisdiction or the statutory authority to investigate ~~over~~ the allegations of the complaint; or  
(b) ~~the charging party fails to cooperate in the investigation of the complaint or fails to keep the department advised of changes in address;~~  
(c)(b) the ~~department~~ Human Rights Bureau determines that the allegations of the complaint are not supported by a preponderance of the evidence; ~~or~~  
(d) ~~the department determines that it will not or cannot hold a hearing on the complaint within 12 months of the filing date, pursuant to 49-2-509(3)(d), MCA, and the parties do not permit the department to retain jurisdiction as provided in 49-2-505(2), MCA.~~

(2) remains the same.

~~(3) At any time after a complaint is filed, the department may issue a notice of dismissal and right to sue without prejudice if the parties and issues before the department are also before a court of competent jurisdiction and the court's decision will be determinative of the issues before the department. If the court later finds that it does not have jurisdiction over a case in which the notice of dismissal and right to sue was issued because of the improper issuance of the notice, the charging party may apply to reopen the complaint before the department.~~

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-509 49-2-504, 49-2-511, 49-3-315, MCA

REASON: There is reasonable necessity to amend the rule to remove language that indicates that the Human Rights Bureau has the ability to determine that neither the Hearings Bureau nor the commission could conduct a hearing on a complaint within 12 months. The amendments also remove language that suggests that the statutory deadlines in the Montana Human Rights Act/Governmental Code of Fair Practices are tolled when a charging party chooses to file in a district court setting. The department does not have the authority to toll the statute by rule.

24.8.410 NOTICE OF DISMISSAL AND RIGHT TO SUE; OBJECTIONS TO DISMISSALS (1) remains the same.

(2) Each notice of dismissal and right to sue issued by the ~~department~~ Human Rights Bureau shall be issued to all parties by ~~certified mail or personal delivery~~ and shall set forth the following information:

(a) through (e) remain the same.

~~(3) If a court finds that it does not have jurisdiction over a case in which the notice of dismissal and right to sue was issued because of the improper issuance of the notice, the charging party may apply to reopen the complaint before the department.~~

~~(4) A party who is dissatisfied with a decision of the department to issue or not issue a notice of dismissal and right to sue may file written objections with the commission as provided in ARM 24.9.1714.~~

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-509 49-2-504, 49-2-511, 49-3-315, MCA

REASON: There is reasonable necessity to amend the rule to remove language that requires certified or personal delivery for the notice of dismissal and right to sue. Changes to the legislation provide a charging party with an allotted amount of time "after the issuance" of the documents. It no longer reads "after the receipt" and therefore there is no reason to keep track of when the documents are received. Additionally, the amendments remove language that suggests that the statutory deadline in the Montana Human Rights Act/Governmental Code of Fair Practices are tolled when a charging party chooses to file in a district court setting. The department does not have the authority to toll the statute by rule.

24.9.101 ORGANIZATION OF THE HUMAN RIGHTS COMMISSION

(1) and (2) remain the same.

~~(a) For complaints filed before July 1, 1997, the commission is responsible for investigating, conciliating and hearing the allegations of discrimination made in the complaint. These functions are delegated to the Department of Labor and Industry, which acts on behalf of the commission. The commission hears objections to dismissals of complaints, hears exceptions to proposed orders issued after contested case hearings, and issues final orders.~~

~~(b) For complaints filed on or after July 1, 1997, the department is responsible for investigating, conciliating and hearing the allegations of discrimination made in the complaint. The commission hears objections to dismissals of complaints and hears appeals of final orders issued after contested case hearings.~~

AUTH: 2-15-1706 2-4-201, 49-2-204, 49-3-106, MCA

IMP: 2-4-201, 49-2-501, through 49-2-505, 49-2-510, 49-5-511, 49-3-315, MCA

24.9.102 RESPONSIBILITIES OF THE DEPARTMENT OF LABOR AND INDUSTRY AND THE COMMISSION (1) For all complaints of discrimination filed before July 1, 1997, the commission has with the department, the Human Rights Bureau delegated the investigative function to the Human Rights Bureau of the Department of Labor and Industry will conduct the informal investigation into the allegations contained in the complaint. The Hearings Bureau will conduct contested case proceedings. The commission has delegated the hearing function to the Hearings Bureau of the Department of Labor and Industry, which issues proposed orders made final by order of the commission will conduct informal hearings on objections to the dismissal of complaints by the Human Rights Bureau and appeals of Hearings Bureau decisions.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 2-4-201, 49-2-204, 49-2-501, through 49-2-504, 49-2-505, 49-5-506, 49-2-510, 49-5-511, 49-3-315, MCA

24.9.103 COMMISSION MEETINGS: -- QUORUM; AND DECISION MAKING AUTHORITY (1)(a) The commission shall meet six times per year or upon call of the chairperson, or at the written request of at least three members, the time or place to be designated by the person calling the meeting.

~~(b) A majority of the membership constitutes a quorum to do business. A contested case in a case filed before July 1, 1997 may be heard before a hearing officer, an individual member of the commission acting as hearing officer, or by at least three members of the commission. The commission may designate one or more non-members to substitute for a commission member or members in the case of disqualification or other appropriate circumstances.~~

~~(c)(2)~~ The department shall provide a staff member to act as secretary of the commission. The staff member will keep general minutes of all commission meetings whether in person or by telephone conference call as a public record.

~~(2)~~(3) A single commission member may issue an order in a contested case proceeding before the commission which is of a purely procedural nature. For example, a single member of the commission may sign an order regarding a briefing schedule, or an order extending the time in which a party may file exceptions when both parties stipulate that such may be done.

(4) At the commission's discretion, it may choose to meet via electronic telecast that is available to the public.

AUTH: 49-2-204, 49-3-106, MCA

IMP: ~~49-2-201~~, 49-2-204, 49-2-205, ~~49-2-502~~, 49-2-505, 49-2-511, 49-3-315, MCA

REASON: There is reasonable necessity to amend the rule to clarify for the participants and the public that the commission is only in session every other month. Additionally, the rule change provides for meetings via electronic telecast. This would only be in cases where there is no request for oral argument and no request regarding the introduction of new evidence. This will save the state of Montana's resources.

24.9.104 LIBERAL CONSTRUCTION; -- EFFECT OF PARTIAL INVALIDITY

(1) and (2) remain the same.

(3) In construing the provisions of the act ~~and~~, the code, and the rules, the commission will refer to federal civil rights ~~case law~~ and guidance where it is both useful and appropriate and does not conflict with the purposes and intentions of state law.

(4) through (7) remain the same.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-205, 49-2-501, 49-2-504, 49-2-505, 49-3-304, 49-3-305, 49-3-307, 49-3-308, 49-3-315, MCA

24.9.105 DEFINITIONS The following definitions apply throughout this chapter:

(1) remains the same.

(2) "Charging party" means a person who files a complaint with the Human Rights Bureau of the Department of Labor and Industry ~~(for complaints filed on or after July 1, 1997) or the Human Rights Commission (for complaints filed before July 1, 1997) under 4-2-501, MCA.~~

(3) through (5) remain the same.

(6) "Notice of dismissal and right to sue" means a document provided to the charging party by the Human Rights Bureau indicating that the charging party has completed the department's administrative process and can file a discrimination action in district court pursuant to 49-2-511, MCA.

~~(6)~~(7) "Respondent" means any person against whom a complaint is filed.

~~(7)~~(8) "Person" means a person as defined in 49-2-101, MCA.

~~(8) "Right to sue letter" means a document which terminates the jurisdiction of the department and commission over a complaint filed before July 1, 1997 under~~

~~the act or code and allows a charging party or aggrieved person to file a discrimination action in district court.~~

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-101, 49-2-501, ~~49-2-509~~ 49-2-511, 49-3-101, ~~49-3-312~~ 49-3-315, MCA

5. The rules proposed to be amended and transferred provide as follows, stricken material interlined, new material underlined:

24.9.1701 (24.9.109) PURPOSE AND SCOPE OF RULES (1) The purpose of the rules in this subchapter is to set forth the procedures the commission will follow for hearing party objections to the dismissal of ~~cases~~ complaints under ~~49-2-509(4)~~ 49-2-511, MCA and appeals of final orders under 49-2-505(4), MCA. ~~These rules apply only to complaints of discrimination filed on or after July 1, 1997.~~

(2) and (3) remain the same.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-204, 49-2-205, 49-2-501, 49-2-504, 49-2-505, ~~49-2-509~~ 49-2-511, 49-3-315, MCA

24.9.1703 (24.9.111) DOCUMENT FORMAT, FILING, AND SERVICE

(1) All documents, pleadings, and papers to be filed shall be eight and one-half inches by eleven inches (8½" x 11") in size, standard quality, opaque, unglazed paper, with a minimum 50% recycled content, of which least 10% shall be postconsumer waste, and in 12-point font or larger, double-spaced, and clearly legible. Exhibits or other documents shall be reproduced in like size unless the original exhibit is required. The commission may require the reproduction of an oversized demonstrative or other exhibit in a size appropriate for the record.

(2) The place of filing is the offices of the Human Rights Bureau, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728. The offices are located at ~~616 Helena Avenue, Suite 302, Steamboat Block~~ 1625 11th Avenue, Helena, Montana. The telephone number is (406) 444-2884; fax (406) 444-2798; TTY (406) 444-0532.

(3) through (6) remain the same.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 2-4-106, 49-2-204, ~~49-2-505~~ 49-2-511, ~~49-2-509~~ 49-3-315, MCA

24.9.1704 (24.9.113) TIME (1) In accordance with Rule 6(a) of the Montana Rules of Civil Procedure, in computing any period of time for acts required by any of the commission's rules, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, legal holiday, or the department offices are closed on such day. In that event, the period runs until the end of the next day when the department offices are open which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11



days, intermediate Saturdays, Sundays, and holidays are excluded in computation. ~~A half holiday will be considered as other days and not as a holiday.~~

(2) remains the same.

(3) Except as to dates fixed by statute and not subject to modification, the commission may enlarge the time to perform an act. In accordance with Rule 6(b) of the Montana Rules of Civil Procedure, the time may be enlarged for good cause shown, ~~with or without a motion or notice, when a request for enlargement of time is made prior to the expiration of the time in which the act is to be performed. If the request is made after the expiration of the specified period in which to act, enlargement may be allowed only upon a showing of excusable neglect in the failure to act.~~

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-204, ~~49-2-505, 49-2-509~~ 49-2-511, 49-3-315, MCA

24.9.1705 (24.9.115) JURISDICTION TO CONSIDER JURISDICTION

(1) The commission shall, at all times, have jurisdiction to determine the jurisdiction of the commission ~~and the department~~ over any particular contested case. In such situations the rules of procedure of the commission shall apply, and questions of jurisdiction may be resolved by rulings and orders based upon the pleadings or after a hearing, as required to suit the circumstances of the case.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-204, ~~49-2-505, 49-2-509~~ 49-2-511, 49-3-315, MCA

24.9.1711 (24.9.117) DISQUALIFICATION OF A MEMBER OF THE COMMISSION (1) through (5) remain the same.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 2-4-611, 49-2-204, ~~49-2-205, 49-2-505, 49-2-509~~ 49-3-315, MCA

24.9.1712 (24.9.119) EX PARTE COMMUNICATIONS (1) remains the same.

(2) "Ex parte communication" means the act of a party ~~to a contested case, any employee of the department~~, any person having an interest in the outcome of a contested case, or any other person not authorized by law, communicating with a member of the commission regarding the merits of any contested case. Communications which do not constitute discussions or information regarding an issue of fact or law in a contested case, such as discussions of enlargements of time, scheduling, administrative matters, and/or questions of procedure do not constitute ex parte communications.

(3) The commission may consult with ~~any person not a party to the pending matter, or with~~ the department regarding the interpretation of a point of law.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 2-4-613, 49-2-204, ~~49-2-505, 49-2-509~~ 49-2-511, 49-3-315, MCA

REASON: There is reasonable necessity to amend the rule in order to clarify a conflict between section (2) and section (3) with regard to the commission communicating with the department on points of law.

24.9.1714 (24.9.121) OBJECTIONS TO DISMISSAL OF COMPLAINT OR REFUSAL TO DISMISS COMPLAINT (1) A party who is dissatisfied with a department decision to dismiss a complaint ~~or to refuse to dismiss a complaint~~ pursuant to ~~49-2-509, MCA~~, may seek commission review of the decision by filing a written objection within 14 days after the ~~decision is served~~ issuance of the notice of dismissal. ~~Briefs are not required.~~

(2) A party who makes an objection and wishes to file a supporting brief must file and serve an original and six copies of the brief within five days of filing the objection. Any opposing party who wishes to file an answer brief must file and serve an original and six copies of the brief within ten days of service of the initial brief. A party making an objection who wishes to file a reply brief must file and serve an original and six copies of the brief within ten days of service of an answer brief. If a party making an objection does not file a supporting brief, any opposing party may ~~request permission from the commission to file a brief in opposition to the objection.~~

(2) Briefs on objections to the dismissal of ~~or refusal to dismiss~~ a complaint may not exceed ten pages in length and comply with the formatting requirements set forth in ARM 24.9.111. Each party's brief should ~~provide~~ attach copies of any specific exhibits ~~from the record which the party believes are essential for the commission to read in the commission's consideration of the matter.~~

(3) Requests for oral argument must be made in writing at the time of filing the first brief of each party. If the request is contained in a brief, the caption should indicate that oral argument is requested. If a request for oral argument is timely made, ten minutes for each party will be reserved for oral argument during the commission meeting at which the objection will be considered.

~~(3)~~(4) The objection will be considered at the next commission meeting after conclusion of the briefing schedule. Consideration of the objection will be based upon the written record unless oral argument is requested by a party and authorized by the commission. The commission may request that the parties present oral argument.

(5) The commission will review an objection to the Human Rights Bureau's decision to dismiss a complaint under an abuse of discretion standard.

~~(4)~~(6) If the commission sustains ~~the objections~~ an objection to the dismissal of a complaint, it will reopen the case by remanding it to the department.

(a) and (b) remain the same.

~~(5)~~(7) If the commission affirms the dismissal of a complaint ~~or sustains the objections to a refusal of the department to dismiss a complaint~~, it will notify the parties of its decision in writing within seven days. The charging party ~~will have~~ has 90 days after receipt of the commission's order affirming the dismissal of a complaint to ~~petition the file the complaint in the appropriate district court for appropriate relief.~~

(6) ~~If the commission affirms the refusal of the department to dismiss a complaint, it will remand the case to the department for further proceedings.~~

~~(7) A party may ask the district court to review a decision of the commission to remand a contested case to the department or to affirm or order the dismissal of the complaint.~~

~~(8) If the court later finds that it does not have jurisdiction over a contested case in which the complaint was improperly dismissed, then the charging party may apply to the department to reopen the complaint.~~

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-204, ~~49-2-509~~ 49-2-511, 49-3-315, MCA

REASON: There is reasonable necessity to amend the rule to remove language that suggests that the statutory deadlines in the Montana Human Rights Act/Governmental Code of Fair Practices are tolled when a charging party chooses to file in a district court setting. The department does not have the authority to toll the statute by rule.

24.9.1717 (24.9.123) APPEAL OF FINAL ORDERS OF THE DEPARTMENT HEARING OFFICER DECISIONS (1) Following entry of a final order hearing officer decision that resolves the complaint ~~after a contested case hearing~~, pursuant to 49-2-505, MCA, parties shall have the opportunity to file an appeal, present briefs, and present oral argument to the commission as provided in this rule.

~~(a) Once a final order is entered in a contested case, a~~

(2) A party that wants to appeal shall provide notice of appeal to the commission, the department, and all parties within ten business 14 days of its receipt of the final order the issuance of the notice of the hearing officer decision. All appellants shall submit an original (or original copy) and six copies of all submissions for the record unless otherwise directed by the commission.

(3) All briefing must conform to the commission's formatting requirements set forth in ARM 24.9.111. A brief on appeal of a hearing officer decision may not exceed 20 pages in length.

~~(2)(4)~~ The commission may reject or modify the conclusions of law and interpretations of administrative rules in the final order hearing officer decision but may not reject or modify the findings of fact unless the commission first reviews the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. ~~The commission may accept or reduce any award or penalty but may not increase it without reviewing the complete record.~~

(a) A party asserting that a finding of fact is clearly erroneous must identify the specific finding that is in error and then cite to the portion or portions of the record that support the party's assertion that the finding is erroneous.

(b) A party asserting that a damage award is clearly erroneous must point out the findings that are in error and then cite to the portion or portions of the record that support a different calculation of the damages. If a party is asserting an alternative amount for monetary relief, the proposed amount and its method of computation must be set out in the supporting brief and supported by citations to the record. The commission may deny an appeal on the issue of damages if a party fails to specify

the amount of damages sought or if a party fails to support that amount with references to the record.

(c) The commission may grant all relief permitted by 49-2-506, MCA, including full affirmative relief.

~~(a)~~(5) Unless all parties stipulate otherwise, a party filing an appeal requiring commission review of the complete record, must file six copies of all contested case prehearing submissions, hearing exhibits, a transcript of the hearing, all posthearing submissions, and the final order hearing officer decision.

~~(b)~~ A party filing an appeal not requiring commission review of the complete record must file six copies of all portions of the contested case record, including the final order hearing officer decision, required for the commission's review of the appeal.

~~(3)~~(6) If an appellant does not intend to file a transcript of the hearing ~~(or if the appellant intends for the commission to review a transcript and a transcript has been prepared and filed with the commission prior to issuance of the final order)~~, the appellant must file and serve the appeal, a supporting brief and the portions of the record required for commission review of the appeal within 20 days of service of the final order appealing party's notice of appeal. Any opposing party must file and serve an answer brief within ten days of service of the ~~appeal and supporting brief supporting the appeal~~. The appellant must file and serve any reply brief within ten days of service of the answer brief.

~~(4)~~(7) If an appellant intends for the commission to review a transcript, and a transcript of the hearing has not been prepared ~~and filed~~ prior to issuance of the final order hearing officer decision, the appellant must file a notice of intent to file an appeal a transcript with the notice of appeal stating that commission review of a transcript of the hearing is required.

(a) and (b) remain the same.

(c) The appellant must file ~~the appeal~~, a supporting brief and the record within 20 days of the date of filing the transcript. Any opposing party must file and serve an answer brief within ten days of service of the ~~appeal and supporting brief~~. The appellant must file and serve any reply brief within ten days of service of the answer brief.

~~(5) No enlargement of time will be allowed for compliance with any of the requirements of this rule except on a showing of good cause.~~

~~(6)~~(8) Except upon stipulation of all parties, a transcript shall be prepared by an impartial person with no affiliation to any party and with no interest in the outcome of the contested case. A transcript shall be a verbatim and complete account of all proceedings on the record of the hearing and shall be in the form commonly accepted by the courts of record of this state. The preparer of a transcript shall certify that the transcript is a complete and accurate account of the stenographic or electronic recording of the hearing and that the preparer has no affiliation with any party and has no interest in the outcome of the contested case.

~~(7)~~(9) If an appellant fails to file a brief in support of the appeal within the time provided by this rule, or within any extension of time granted, any opposing party may move to strike the appeal. If an opposing party fails to file a brief in opposition to appeal within the time provided by this rule, or within any extension of time

granted, that party will not be heard at oral argument except by permission or at the request of the commission.

~~(8)~~(10) When a party has timely filed an appeal of a ~~final order~~ hearing officer decision and has timely filed a supporting brief, the commission will fix a date, not later than 120 days from the notice of appeal, to provide the parties an opportunity to present oral argument to the commission. Each party is allowed a total of one-half hour of argument before the commission, including cross-appeals. Oral argument may be waived by the parties, except where it is requested by the commission.

~~(9)~~(11) ~~The chair~~ A member of the commission, ~~his or her designee, or a hearing officer appointed by the commission~~ may consider procedural motions and enter procedural orders as necessary for commission review.

~~(10)~~(12) ~~The commission may appoint a~~ A member of the commission ~~for the purpose of conducting~~ may conduct a prehearing conference prior to the commission's consideration of the appeal.

(13) The commission shall render a decision which affirms, rejects, modifies, and/or remands the hearing officer decision within 90 days of the hearing of the appeal. The final decision of the commission is the final agency decision.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-204, 49-2-505, 49-2-506, 49-2-511, 49-3-315, MCA

REASON: There is reasonable necessity to amend the rule in order to clarify the arguments and information that are necessary for proper application of the standard of review when a party that chooses to appeal the hearing officer decision.

24.9.1718 (24.9.125) COMMISSION HEARINGS TO CONSIDER APPEALS

(1) On the date fixed by the commission for oral argument ~~upon the appeal of a party~~, a quorum of the commission shall ~~hear oral argument~~ consider objections to dismissals by the Human Rights Bureau and appeals of hearing officer decisions.

(2) ~~Any~~ Upon motion of the commission, any member of the commission who is absent at the presentation of oral argument may participate in deliberations and the entry of a final decision or order of the commission if he or she, where required, reviews the complete record of the contested case, including a recording or transcript of the oral argument of the parties.

(3) At the time of oral argument, and subject to the rule of the commission chair, any member of the commission may pose questions to a party, or his or her representatives.

~~(4) At the request of a party or a member of the commission, the date of the hearing may be continued upon a showing of good cause, but not beyond the 120 days provided by law.~~

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-204, ~~49-2-505~~ 49-2-511, 49-3-315, MCA

6. The proposed new rules provide as follows:

NEW RULE I JURISDICTION TO CONSIDER JURISDICTION (1) The Hearings Bureau shall, at all times, have jurisdiction to determine the jurisdiction of the department over any particular contested case. In such situations the rules of procedure of the Hearings Bureau shall apply, and questions of jurisdiction may be resolved by rulings and orders based upon the pleadings or after a hearing, as required to suit the circumstances of the case.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-505, 49-3-315, MCA

NEW RULE II INCORPORATION OF OTHER PROCEDURAL RULES BY REFERENCE (1) To the extent these rules do not provide for or specify procedures, the Hearings Bureau adopts and applies the Montana Rules of Civil Procedure and Montana Rules of Evidence. This adoption excludes references to jury trials, issuance of subpoenas by attorneys, and other exclusively judicial features.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 2-4-612, 49-2-505, 49-3-315, MCA

NEW RULE III REPRESENTATION IN A CONTESTED CASE PROCEEDING (1) All parties before the Hearings Bureau have the right to be represented by an attorney of their choice.

(2) The Hearings Bureau will not provide counsel for parties or provide funds for the payment of counsel.

(3) The department may appear in any contested case for the limited purpose of representing the interests of the public.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-505, 49-3-315, MCA

NEW RULE IV APPOINTMENT AND AUTHORITY OF HEARING OFFICER (1) Contested cases will be presided over and heard by a hearing officer appointed by name in the initial notice of hearing issued by the Hearings Bureau.

(2) The hearing officer has general authority to regulate the course of contested cases, and may exercise those powers and authority provided by 2-4-611, MCA, including all powers and authority provided or implied by law.

(3) The hearing officer may establish prehearing and hearing dates and procedures, rule upon procedural petitions and motions, make procedural rulings and orders which appear necessary from the record, and otherwise regulate the conduct and adjudication of contested cases as provided by law.

(4) No ruling, order, decision, or exercise of the power and authority of a hearing officer is reviewable by the commission prior to the entry of the hearing officer's decision that resolves the complaint, except as otherwise provided in these rules or unless a manifest and irreparable injustice would result.

(5) The authority of a hearing officer terminates upon the entry of a decision on the merits unless the commission further delegates authority for other proceedings or exercise of authority.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-611, 49-2-505, 49-3-315, MCA

NEW RULE V DISQUALIFICATION OF A HEARING OFFICER (1) A party may disqualify a hearing officer from presiding over any matter governed by these rules only upon an affirmative showing, made in good faith, of personal bias, a lack of independence, disqualification by law, or other ground for disqualification allowed by law.

(2) A party seeking to disqualify a hearing officer may do so only upon the filing of a motion which is supported by a sufficient affidavit showing the particular facts and matters which constitute good cause for disqualification under (1). The party must file the motion and affidavit no later than 30 days after that party has notice of the assigned presiding hearing officer.

(3) Following the filing of a motion and affidavit of disqualification and a reasonable period of time for an opposing party to comment upon it, the bureau chief of the Hearings Bureau or his or her designee shall either enter an order of recusal or decline disqualification. That order must specify the particular facts and grounds upon which it is based.

(4) When disqualification is declined, a party objecting to the ruling must petition the commission for an order of disqualification within ten days following the date of the order declining disqualification. If no such petition is filed, the order is not appealable to the commission.

(5) A hearing officer may make an order or give a notice of recusal or self-disqualification at any time.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-611, 49-2-505, 49-3-315, MCA

NEW RULE VI EX PARTE CONSULTATIONS (1) A presiding hearing officer may not participate in or initiate any ex parte consultation, as defined in (2), on the merits of a matter with any party or the department.

(2) "Ex parte communication" means the communication with the presiding hearing officer by any person having interest in the outcome of the contested case proceeding regarding the merits of the case without notice or argument by any person adversely interested. A hearing officer may engage in communication concerning administrative or procedural matters where necessary under the circumstances and which does not adversely affect the substantial rights of a party.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-613, 49-2-505, 49-3-315, MCA

NEW RULE VII CONTESTED CASE RECORD (1) The record in a contested case shall include all documents listed in the Hearings Bureau docket, including without limitation:

- (a) all pleadings, motions, intermediate rulings;
- (b) all evidence received or considered, including a stenographic record of oral proceedings when requested by a party;
- (c) a statement of matters officially noticed;
- (d) questions and offers of proof, objections and rulings thereon;
- (e) proposed findings and exceptions; and
- (f) any decision, opinion, or report by the hearing officer presiding at the hearing.

(2) The hearing will be recorded electronically unless a party requests a stenographic record. The cost of the transcription shall be paid by the requesting party. If provided, an original transcript shall be included in the record of the contested case.

(3) If an electronic recording of any hearing or proceeding is defective or cannot be transcribed, the hearing officer may reconstruct the record or the parties may reconstruct the record by stipulation.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 2-4-614, 49-2-505, 49-3-315, MCA

NEW RULE VIII PLACE OF HEARING (1) The hearing officer shall hold contested case hearings in the county where the unlawful conduct is alleged to have occurred, unless a party requests a change of venue for good cause shown. The hearing officer may change venue for the hearing of a contested case upon the entry of a default against a respondent, to expedite hearing, or otherwise to provide for a fair hearing upon good cause which appears of record.

(2) The hearing officer may require a party to make arrangements for a suitable place of hearing and bear the cost of facilities to conduct the hearing.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-505, 49-3-315, MCA

NEW RULE IX FORMAL PROCEEDINGS (1) All contested case proceedings shall be formal unless informal proceedings or disposition under 2-4-604, MCA, are permitted by stipulation of the parties, agreed settlement, consent order, or default.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 2-4-603, 2-4-604, 2-4-612, 49-2-505, 49-3-315, MCA

NEW RULE X INFORMAL PROCEEDINGS (1) Informal proceedings may be conducted where the parties to a contested case jointly waive a formal proceeding, where the default of a party is entered, or where informal proceedings are appropriate following the imposition of sanctions upon a party.



(2) When informal proceedings are used, the hearing officer shall give parties an opportunity to present evidence at a convenient time and place, using fair procedures.

(3) During informal proceedings, the hearing officer may receive and consider evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, but may not receive or consider evidence which is irrelevant, immaterial, or unduly repetitious. Hearsay evidence may be received and considered to supplement or explain other evidence, but such hearsay evidence may not be considered to support a finding unless it would otherwise be admissible under the Montana Rules of Evidence.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 2-4-604, 49-2-505, 49-3-315, MCA

NEW RULE XI DOCUMENT FORMAT, FILING, AND SERVICE (1) All documents, pleadings, and papers to be filed shall be eight and one-half inches by eleven inches (8½" x 11") in size, standard quality, opaque, unglazed paper, with a minimum 50% recycled content, of which at least 10% shall be postconsumer waste, and be printed on both sides (double sided). Exhibits or other documents shall be reproduced in like size unless the original exhibit is required. A hearing officer may require the reproduction of an oversized demonstrative or other exhibit in a size appropriate for the record.

(2) The place of filing is the offices of the Hearings Bureau, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, or during a hearing, by personal delivery to the presiding hearing officer.

(3) Filing with the Hearings Bureau is effective upon actual receipt at the offices of the department or by the hearing officer at the hearing and not upon mailing.

(4) Copies of all submissions filed must be served upon all parties of record, including intervenors or other parties allowed to appear for special purposes, and all submissions must contain or be accompanied by a certificate of service showing proof of the method of service and the date upon which such service was made. Service of copies of submissions upon parties shall be made in accordance with the Montana Rules of Civil Procedure and may be made by means of first class mail, postage prepaid, unless the hearing officer designates another manner of service.

(5) The hearing officer may accept telephonic or oral filings of motions or requests for procedural relief, subject to recording by means of minute entry, note, or the subsequent filing of a true and accurate recording of such matters, upon fair and timely notice to all parties of record.

(6) Filing of a facsimile copy of a document of no more than 20 pages, which is an exact duplicate of the original, shall meet the filing requirements of these rules only if the facsimile copy is followed within five days by filing of the original or original copy of the document and required copies.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 2-4-106, 49-2-505, 49-3-315, MCA

NEW RULE XII APPEARANCE, DISMISSAL, AND DEFAULT (1) Answers to complaints following the service of the notice of hearing are not required. The contentions of the parties and fair notice of them to prepare for hearing shall be developed through discovery and/or prehearing orders.

(2) Each party shall make its appearance in a contested case within 20 days of the date on which service of the notice of hearing is made upon the party or his or her legal representative. Appearance shall be in the form of a written notice acknowledging service of certification, and a designation of the name, address, and telephone number of the attorney for a party. If a party chooses not to be represented by counsel, such fact shall be indicated in the written appearance. This rule is subject to the provisions of 2-4-106, MCA, and Rule 4D of the Montana Rules of Civil Procedure governing service by mail.

(3) In the event a party fails to appear, fails to comply with an order, fails to prosecute or defend the case, fails to engage in discovery, or otherwise fails to do an act required by law or these rules, the hearing officer may enter an appropriate order terminating the contested case or limiting prosecution or defense of the contested case. Such orders may include dismissal of a complaint, entry of default, disposition by informal procedure, or entry of other appropriate orders.

(4) A party may be relieved of any of the sanctions provided in (3) upon a showing of excusable neglect, good cause, and a good faith willingness to comply with the further orders of the hearing officer or the commission. A party may request such relief by the filing of a motion and supporting affidavit within ten days of the entry of an order imposing such sanctions.

(5) Upon the entry of a default against a respondent, the hearing officer may fix a date or procedures for informal disposition of the complaint. Upon the default, the charging party must present evidence in support of the complaint and proof of damages.

(6) Before the entry of an order of dismissal of a complaint, on any basis other than a decision on the merits, in cases where the department has made a reasonable cause determination, the hearing officer shall notify the department of the proposed dismissal of the case in order to permit the department an opportunity to intervene or seek redesignation for the limited purpose of obtaining the appropriate affirmative relief.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 2-4-106, 2-4-603, 49-2-505, 49-3-315, MCA

NEW RULE XIII INTERVENTION AND LIMITED PARTICIPATION

(1) Intervention will be governed by the applicable rules of civil procedure, except that there is no intervention of right once a case has been certified to the Hearings Bureau for a contested case.

(2) The hearing officer may permit a party who does not seek to intervene as of right to participate in a matter in a limited capacity, but not as a party. A person who may not seek intervention as of right may be permitted to participate in a contested case in a limited manner, such as a friend of the tribunal, where such participation would not cause prejudice to a party, delay proceedings, or deny a fair

hearing. In such instances, a limited participant shall not have the right to control proceedings.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-505, 49-3-315, MCA

NEW RULE XIV CLASS ACTIONS (1) A complaint may be prosecuted as a class action where the outcome of a contested case will affect a class of persons and where a class action would otherwise be allowed under Rule 23 of the Montana Rules of Civil Procedure.

(2) Class action applications, motions, and procedures following certification of a contested case for hearing shall be governed by Rule 23 of the Montana Rules of Civil Procedure and any Montana law governing class actions.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-505, 49-3-315, MCA

NEW RULE XV MOTIONS (1) Any party may seek relief in a contested case by means of an appropriate motion. Motions shall clearly state the relief sought by a party, the grounds and authority supporting the entry of an order granting the motion, any prejudice which would result should the motion be denied, and the precise relief desired. All motions which assert factual matters not of record as the grounds for relief must be accompanied by affidavits or verified exhibits which show the facts upon which the proposed relief is grounded. Each motion must be supported by a brief or memorandum of law showing the moving party's entitlement to relief as a matter of law.

(2) The hearing officer may deny any motion which is not supported by an affidavit, where required, and which is not supported by a brief or memorandum of law.

(3) Upon filing a motion, the moving party shall file its supporting brief and any other supporting materials. Within ten days after service of that brief, the opposing party shall file an answer brief and any other supporting materials. Within ten days after the service of the answer brief, the moving party may file a reply brief or other appropriate response.

(4) The failure of a moving party to file a brief in support of the motion may be treated as an admission that the motion is without merit. The failure to file an answer brief may be treated as an admission the motion is well taken and should be granted. The filing of a reply brief by the movant is optional and failure to file one will not subject the motion to summary ruling.

(5) The hearing officer may order live or telephonic oral argument upon a motion on its own motion or that of a party. Oral argument on any motion, including a motion for summary judgment, is waived unless requested by the moving party in the moving party's brief in support of the motion or by the party responding to the motion in the answer brief.

(6) At the discretion of the hearing officer, oral motions may be heard during the course of a hearing or in extraordinary situations which do not result in prejudice to a party.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-505, 49-3-315, MCA

NEW RULE XVI EVIDENCE (1) The evidence received and considered in contested case proceedings shall conform to the Montana Rules of Evidence and the provisions of 2-4-612, MCA, except as modified for informal proceedings under 2-4-603 and 2-4-604, MCA.

(2) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data. They shall be afforded an opportunity to contest the material so noticed.

(3) Parties have the right to conduct cross-examination for a full and true disclosure of facts, and other examination by way of examination beyond the scope of direct, cross, or redirect examination shall be within the sound discretion of the hearing officer or the commission.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 2-4-603, 2-4-604, 2-4-612, 49-2-505, 49-3-315, MCA

NEW RULE XVII DISCOVERY (1) The methods, scope, and procedures of discovery are those governed and permitted by the Montana Rules of Civil Procedure, recognizing that the hearing officer is not permitted by law to make an award of attorney fees as a sanction for failure to make discovery.

(2) The hearing officer may fix the times, places, and methods of discovery by conference, prehearing order, or otherwise, and may enter appropriate orders for violations of orders fixing discovery procedures.

(3) Depositions, interrogatories and answers to them, requests for production of documents and responses to them, and other discovery documents shall not be filed with the Hearings Bureau without prior leave of the hearing officer.

(4) The use of depositions at hearing or in lieu of testimony by a witness shall be governed by the Montana Rules of Civil Procedure. Where portions of a deposition are necessary for consideration, the hearing officer may order the preparation of excerpts of a deposition to avoid a bulky record or consideration of irrelevant or prejudicial matter.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 2-4-602, 49-2-505, 49-3-315, MCA

NEW RULE XVIII AMENDMENT OF COMPLAINT (1) A charging party may amend a complaint to cure defects or omissions, including procedural defects or defects in verification, and to allege new facts and matters arising out of continuing violation of law. A charging party may also amend a complaint where an amendment is necessary to provide a respondent with fair notice of the allegations of a party.

(2) The allowance or denial of an amendment to a complaint shall be governed by the provisions of 49-2-501, MCA, with respect to the time for filing complaints except when the new material relates back to the filing of the original complaint.

(3) The redesignation of a complaint pursuant to 49-2-201, MCA, on behalf of the commissioner shall not, unless so specified, constitute the filing of a new complaint but shall relate to the underlying complaint in a contested case as an amendment to it.

(4) The charging party may amend the complaint only by leave of the hearing officer or consent of an adverse party.

(5) A complaint may be amended by way of a prehearing order which contains the contentions of the parties and which is substituted for pleadings in the contested case.

(6) To the extent the amendment of pleadings is not otherwise addressed in this rule, such amendments shall be governed by the provisions of Rule 15 of the Montana Rules of Civil Procedure.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-501, 49-2-505, 49-3-315, MCA

NEW RULE XIX PREHEARING CONFERENCES AND ORDERS (1) The hearing officer may hear contested cases based upon a prehearing order which contains the full contentions of the parties as to fact and law, along with their claims for relief. A prehearing order supersedes all prior pleadings in the contested case.

(2) The hearing officer may order preliminary prehearing conferences, prehearing conferences, or other procedures as necessary to appropriately regulate the conduct of the contested case proceeding.

(3) If a party fails to comply with an order to prepare a prehearing memorandum or portions of one, or fails to participate in any prehearing conference or proceeding, a hearing officer may impose sanctions upon that party by way of dismissal of the complaint, default, limitation of evidence in support of or in defense to a complaint, or otherwise.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-505, 49-3-315, MCA

NEW RULE XX SUBPOENAS (1) The hearing officer may issue subpoenas without a request or upon that of a party for the attendance of witnesses or production of evidence. The procedure for service of subpoenas and payment of fees shall conform to the manner provided in civil actions.

(2) The hearing officer may enter appropriate orders, as allowed by law, for the failure of a person subject to the provisions of a subpoena to comply with its terms.

(3) A party seeking to subpoena a state employee, including the Human Rights Bureau investigator, must, as required by 26-2-507 and 26-2-515, MCA, reimburse the department for regular pay and benefits paid to that state employee for time spent answering the subpoena in advance of his or her appearance.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 2-4-104, 2-4-602, 26-2-507, 26-2-515, 49-2-203, 49-2-505, 49-3-315, MCA

NEW RULE XXI HEARING (1) A contested case hearing shall be conducted in the manner of civil actions before the district court, sitting without a jury, and the hearing officer may enter appropriate orders during the course of the hearing to assure the conduct of a fair hearing. The method and scope of the presentation of evidence at hearing, as well as the conduct of the hearing, recesses, and continuances, is within the sound discretion of the hearing officer.

(2) The hearing officer may enter appropriate orders to control the conduct of the parties or their attorneys, including conduct which is disruptive or constitutes contempt, and may recess, continue, or limit the course of hearing.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 2-4-612, 49-2-505, 49-3-315, MCA

NEW RULE XXII HEARING OFFICER DECISIONS (1) Following the close of hearing or other proceeding which allows the parties an opportunity for hearing, the hearing officer shall prepare a written hearing officer decision consisting of findings of fact, conclusions of law, and recommended relief, if any. Findings of fact must be based exclusively on the evidence and on matters officially noticed. Each conclusion of law must be supported by authority or by a reasoned opinion. Copies of the hearing officer decision shall be served upon all parties of record.

(2) A hearing officer may render an opinion of law in lieu of detailed references to authority in the making of conclusions of law.

(3) Hearing officer decisions are indexed and available at the offices of both the Human Rights Bureau and the Hearings Bureau and may also be accessed through their respective web sites.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 2-4-621, 2-4-623, 49-2-505, 49-2-506, 49-3-315, MCA

NEW RULE XXIII NOTIFICATION OF ENTRY OF HEARING OFFICER DECISION (1) Upon the entry of the hearing officer decision, the hearing officer shall give the parties written notice of the entry of that order, including the date of entry of the order and a notification of the rights of the parties to file exceptions to it for review by the commission.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 2-4-621, 49-2-505, 49-3-315, MCA

7. The department and the commission propose the repeal of the following rules:

24.8.405 DISMISSAL BY REQUEST OF A PARTY found at ARM page 24-330.

AUTH: 49-2-204, MCA  
IMP: 49-2-305, 49-2-509, MCA

24.9.107 APPLICABILITY OF RULES found at ARM page 24-362.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: Title 49, ch. 2 and 3, MCA

24.9.210 AMENDMENT OF COMPLAINTS found at ARM page 24-365.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-501, 49-2-503, 49-2- 504, 49-2-505, MCA

24.9.212 CONFIDENTIALITY found at ARM page 24-365.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-504, 49-2- 505, 49-3-307, 49-3-308, MCA

24.9.213 COMPLAINT; WITHDRAWAL OF COMPLAINT BY CHARGING PARTY; REDESIGNATION OF COMPLAINT found at ARM page 24-366.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-603, 49-2-504, 49-3-307, MCA

24.9.218 COMPLAINT, COMMENCEMENT OF INVESTIGATION, MEDIATION found at ARM page 24-368.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-603, 49-2-504, 49-3-307, MCA

24.9.219 INVESTIGATION found at ARM page 24-368.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-203, 49-2-504, 49-2-506, 49-3-307, 49-3-309, MCA

24.9.220 EMERGENCY ORDER found at ARM page 24-369.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-503, 49-3-306, MCA

24.9.221 INVESTIGATION; FAILURE TO COOPERATE WITH INVESTIGATION found at ARM page 24-369.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-203, 49-2-504, 49-2-505, 49-3-307, 49-3-308, MCA

24.9.222 INVESTIGATION; FAILURE OF CHARGING PARTY OR AGGRIEVED PERSON TO COOPERATE OR KEEP THE DEPARTMENT ADVISED OF CHANGES IN ADDRESS found at ARM page 24-370.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-504, 49-2-509, 49-3-307, 49-3-312, MCA

24.9.223 INVESTIGATION; FAILURE TO PRODUCE EVIDENCE found at ARM page 24-371.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-504, 49-2-505, 49-3-307, 49-3-308, MCA

24.9.224 INVESTIGATION; FINDING OF REASONABLE CAUSE OR NO REASONABLE CAUSE found at ARM page 24-372.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-504, 49-3-307, MCA

24.9.225 PROCEDURE ON FINDING OF NO REASONABLE CAUSE found at ARM page 24-372.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-504, 49-2-505, 49-2-509, 49-3-307, 49-3-308, 49-3-312, MCA

24.9.226 CONCILIATION AND SETTLEMENT found at ARM page 24-372.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-504, 49-2-505, 49-3-307, 49-3-308, MCA

24.9.230 CERTIFICATION OF A CASE FOR HEARING found at ARM page 24-374.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-505, 49-2-506, 49-3-308, 49-3-312, MCA

24.9.231 NOTICE OF CERTIFICATION FOR HEARING found at ARM page 24-374.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-505, 49-3-308, 49-3-312, MCA

24.9.261 DISMISSAL OF COMPLAINT ALSO PENDING IN COURT found at ARM page 24-387.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-204, 49-2-501, 49-2-505, MCA



24.9.262A ISSUANCE OF RIGHT TO SUE LETTER WHEN REQUESTED BY A PARTY found at ARM page 24-387.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-509, 49-3-312, MCA

24.9.263 CONTENTS OF RIGHT TO SUE LETTER found at ARM page 24-389.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-509, 49-3-312, MCA

24.9.264 EFFECT OF ISSUANCE OF RIGHT TO SUE LETTER found at ARM page 24-389.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-509, 49-3-312, MCA

24.9.265 DOCUMENT FORMAT, FILING, SERVICE AND TIME found at ARM page 24-391.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-106, 49-2-504, 49-2-509, 49-3-307, 49-3-312, MCA

24.9.301 PURPOSE AND SCOPE OF RULES found at ARM page 24-411.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-505, 49-3-308, MCA

24.9.302 DEFINITIONS RELATING TO CONTESTED CASES found at ARM page 24-411.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-611, 2-15-1706, 49-2-101, 49-2-201, 49-2-505, 49-3-101, 49-3-308, MCA

24.9.303 JURISDICTION TO CONSIDER JURISDICTION found at ARM page 24-412.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-505, 49-3-308, MCA

24.9.304 INCORPORATION OF OTHER PROCEDURAL RULES BY REFERENCE found at ARM page 24-412.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-612, 49-2-505, 49-3-308, MCA

24.9.305 PRESENTATION OF A CASE IN SUPPORT OF A COMPLAINT  
found at ARM page 24-413.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-505, 49-2-510, 49-3-308, MCA

24.9.306 APPOINTMENT AND AUTHORITY OF HEARING EXAMINER  
found at ARM page 24-413.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-611, 49-2-505, 49-3-308, MCA

24.9.307 DISQUALIFICATION OF A HEARING EXAMINER OR MEMBER  
OF THE COMMISSION found at ARM page 24-414.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-611, 49-2-505, 49-3-308, MCA

24.9.308 EX PARTE CONSULTATIONS found at ARM page 24-415.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-613, 49-2-505, 49-3-308, MCA

24.9.309 CONTESTED CASE RECORD found at ARM page 24-415.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-614, 49-2-505, 49-3-308, MCA

24.9.310 PLACE OF HEARING found at ARM page 24-416.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-505, 49-3-308, MCA

24.9.311 FORMAL PROCEEDINGS found at ARM page 24-416.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-603, 2-4-604, 2-4-612, 49-2-505, 49-3-308, MCA

24.9.312 INFORMAL PROCEEDINGS found at ARM page 24-417.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-604, 49-2-505, 49-3-308, MCA

24.9.314 DOCUMENT FORMAT, FILING AND SERVICE found at ARM page  
24-418.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-106, 49-2-505, 49-3-308, MCA

24.9.316 APPLICATION OF RULES AND UNREPRESENTED PARTIES  
found at ARM page 24-421.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-505, 49-3-308, MCA

24.9.317 APPEARANCE, DISMISSAL AND DEFAULT found at ARM page  
24-421.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-106, 2-4-603, 49-2-505, 49-3-308, MCA

24.9.318 INTERVENTION found at ARM page 24-422.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-505, 49-3-308, MCA

24.9.319 CLASS ACTIONS found at ARM page 24-423.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-505, 49-3-308, MCA

24.9.320 MOTIONS found at ARM page 24-423.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-505, 49-3-308, MCA

24.9.321 EVIDENCE found at ARM page 24-425.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-603, 2-4-604, 2-4-612, 49-2-505, 49-3-308, MCA

24.9.322 DISCOVERY found at ARM page 24-425.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-602, 49-2-505, 49-3-308, MCA

24.9.323 AMENDMENT OF COMPLAINT found at ARM page 24-427.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-501, 49-2-505, 49-3-304, 49-3-308, MCA

24.9.324 PREHEARING CONFERENCES AND ORDERS found at ARM  
page 24-428.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-505, 49-3-308, MCA

24.9.325 SUBPOENAS found at ARM page 24-429.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-104, 2-4-602, 49-2-203, 49-2-505, 49-3-308, MCA

24.9.326 HEARING found at ARM page 24-429.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-612, 49-2-505, 49-3-308, MCA

24.9.327 PROPOSED ORDERS found at ARM page 24-430.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-621, 49-2-505, 49-2-506, 49-2-507, 49-3-308, 49-3-309, 49-3-310, MCA

24.9.328 NOTIFICATION OF ENTRY OF PROPOSED ORDER found at ARM page 24-430.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-621, 49-2-505, 49-3-308, MCA

24.9.401 PURPOSE AND SCOPE OF RULES found at ARM page 24-441.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-501, 49-2-204, 49-3-106, MCA

24.9.402 CONSTRUCTION OF STATUTES AND RULES found at ARM page 24-441.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-501, 49-2-401, 49-2-402, 49-2-403, 49-3-105, MCA

24.9.403 FORM AND CONTENT OF PETITION found at ARM page 24-442.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-501, 49-2-401, 49-3-105, MCA

24.9.404 FILING AND DOCKETING FOR HEARING found at ARM page 24-442.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-501, 49-2-204, 49-3-106, MCA

24.9.405 APPOINTMENT OF HEARING EXAMINER AND AUTHORITY  
found at ARM page 24-443.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-501, 49-2-204, 49-3-106, MCA

24.9.406 NOTICE found at ARM page 24-443.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-501, 49-2-204, 49-3-106, MCA

24.9.407 PARTIES found at ARM page 24-444.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-501, 49-2-204, 49-3-106, MCA

24.9.409 PREHEARING CONFERENCES found at ARM page 24-445.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-501, 49-2-204, 49-3-106, MCA

24.9.410 NATURE OF HEARINGS found at ARM page 24-445.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-501, 2-4-603, 2-4-604, 49-2-401, 49-3-105, MCA

24.9.411 PROPOSED ORDERS found at ARM page 24-445.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-501, 2-4-621, 2-4-623, 49-2-401, 49-3-104, MCA

24.9.412 FINAL ORDERS found at ARM page 24-446.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-501, 2-4-623, 49-2-401, 49-3-105, MCA

24.9.414 INCORPORATION OF OTHER RULES BY REFERENCE found at  
ARM page 24-446.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 2-4-501, 49-2-401, 49-3-105, MCA

24.9.1719 DETERMINATION OF APPEALS found at ARM page 24-587.

AUTH: 49-2-204, 49-3-106, MCA  
IMP: 49-2-204, 49-2-505, 49-2-506, MCA

8. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Marieke Beck, Agency Counsel, Office of Legal Services, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728; by facsimile to (406) 444-1394; or by e-mail to mabeck@mt.gov, and must be received no later than 5:00 p.m., November 7, 2008.

9. An electronic copy of this Notice of Public Hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

10. The department and the commission each maintain a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to [mcadwallader@mt.gov](mailto:mcadwallader@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

11. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was notified by U.S. mail on September 7, 2007.

12. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER

Mark Cadwallader  
Alternate Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER

Mark Cadwallader  
Alternate Rule Reviewer

/s/ RYAN RUSCHE

Ryan Rusche, Chair  
Human Rights Commission

Certified to the Secretary of State September 29, 2008